

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Regulatory Relief Mechanisms
- 2) Code Citation: 35 Ill. Adm. Code 104
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
104.500	New Section
104.505	New Section
104.510	New Section
104.515	New Section
104.520	New Section
104.525	New Section
104.530	New Section
104.535	New Section
104.540	New Section
104.545	New Section
104.550	New Section
104.555	New Section
104.560	New Section
104.565	New Section
104.570	New Section
104.575	New Section
104.580	New Section
104.585	New Section
104.590	New Section
- 4) Statutory Authority: Implementing and authorized by Sections 4, 5 and 38.5 of the Illinois Environmental Protection Act [415 ILCS 5/5 and 38.5, as amended by PA 99-937, eff. 2-24-17].
- 5) A Complete Description of the Subjects and Issues Involved: PA 99-937, effective February 24, 2017, amends the Environmental Protection Act (Act) to allow the Board to issue time limited water quality standards (TLWQS). TLWQS are a new relief mechanism for adoption of federally approvable water quality standard variances consistent with federal rules. Under PA 99-937, not only a single discharger but multiple dischargers may seek a TLWQS. TLWQS may also address standards in a waterbody or waterbody segment, or a watershed. IEPA's proposal sets forth the procedures necessary to adopt TLWQS pursuant to PA 99-937. The proposal explains what a TLWQS is and how it will be obtained. Additionally, the proposal explains how a TLWQS can be used, specifies the different parties to a TLWQS proceeding (i.e. petitioners and participants), and the types of notice and service required for TLWQS proceedings. The proposed

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rules also set forth provisions of the statutorily created stay.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R18-18 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board  
JRTC  
100 W. Randolph St., Suite 11-500  
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Interested persons may request copies of the Board's opinion and order in R18-18 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, municipality or not-for-profit that would seek relief

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from a water quality standard as a discharger to a waterbody or watershed could be affected.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of Professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2017

The full text of the Proposed Amendments begins on the next page:

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 104  
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

Section  
104.100 Applicability  
104.102 Severability  
104.104 Definitions  
104.106 Petitions and Hearings

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SUBPART B: VARIANCES

Section  
104.200 General  
104.202 Filing Requirements  
104.204 Petition Content Requirements  
104.206 ~~Resource Conservation and Recovery Act (RCRA)~~ RCRA Variance  
Petition Contents  
104.208 Consistency with Federal Law  
104.210 Petition for Extension of Variance  
104.212 Motion for Modification of Internal Variance Compliance Dates  
104.214 Notice of Petition  
104.216 Agency Investigation and Recommendation  
104.218 Agency Recommendation to RCRA Variance  
104.220 Response to Agency Recommendation  
104.222 Stipulations  
104.224 Objections to Petition, Written Comments, and Request for  
Hearing  
104.226 Amended Petition and Amended Recommendation  
104.228 Insufficient Petition  
104.230 Dismissal of Petition  
104.232 Calculation of Decision Deadline  
104.234 Hearing  
104.236 Hearing Procedures  
104.238 Standard of Review  
104.240 Certificate of Acceptance  
104.242 Term of Variance  
104.244 Variance Conditions  
104.246 Performance Bonds  
104.248 Objection to Conditions

SUBPART C: PROVISIONAL VARIANCES

Section  
104.300 Applicability  
104.302 Agency Action  
104.304 Initiating a Request

104.306 Filing and Notice  
104.308 Term  
104.310 Simultaneous Variance Prohibition (Repealed)

SUBPART D: ADJUSTED STANDARDS

Section

104.400 General  
104.402 Initiation of Proceeding  
104.404 Request to Agency to Join as Co-Petitioner  
104.406 Petition Content Requirements  
104.408 Petition Notice Requirements  
104.410 Proof of Petition Notice Requirements  
104.412 Effect of Filing a Petition: Stay  
104.414 Dismissal of Petition  
104.416 Agency Recommendation and Petitioner Response  
104.418 Amended Petition, Amended Recommendation, and Amended Response  
104.419 Insufficient Petition  
104.420 Request for Public Hearing  
104.422 Public Hearing  
104.424 Hearing Notice  
104.426 Burden of Proof  
104.428 Board Action

SUBPART E: TIME-LIMITED WATER QUALITY STANDARDS

Section

104.500 Purpose  
104.505 Applicability and Use  
104.510 Severability  
104.515 Definitions  
104.520 General Procedures  
104.525 Stay  
104.530 Petition Contents  
104.535 Agency Response  
104.540 Board Established Classes and Deadlines  
104.545 Substantial Compliance Assessment  
104.550 Recommendation and Response  
104.555 Hearing  
104.560 Burden of Proof  
104.565 Opinion and Order  
104.570 USEPA ~~Approval~~ Review  
104.575 Coverage Under ~~Existing~~ Board-Approved Time-Limited Water Quality Standards  
104.580 Reevaluation  
104.585 Appeal Rights  
104.590 Extension

104.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart E: Implementing and authorized by Sections 4, 5, and 38.5 of the Act [415 ILCS 5/5 and 38.5].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12905, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7973, effective May 20, 2016; amended in R18-17-18 at 41 Ill. Reg. 10049, effective July 5, 2017; amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

#### SUBPART E: TIME-LIMITED WATER QUALITY STANDARDS

##### Section 104.500 Purpose

a) This Subpart sets forth procedures for obtaining a time-limited water quality standard. A time-limited water quality standard provides relief from water quality standards as set forth in 35 Ill. Adm. Code 302 and 303.

b) This Subpart must be read in conjunction with 35 Ill. Adm. Code 101. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

##### Section 104.505 Applicability and Use

a) A time-limited water quality standard proceeding is a non-adjudicatory proceeding.

b) A time-limited water quality standard may be adopted for a single discharger, multiple dischargers, a watershed, a water body, or a waterbody segment.

c) The extent and coverage of a time-limited water quality standard must be set forth in the Board's order as specified in Section 104.565.

d) A time-limited water quality standard, once adopted by the Board and approved by United States Environmental Protection Agency, must be the applicable standard for the purposes of the Clean Water Act in developing ~~National Pollutant Discharge Elimination System~~NPDES permit limits and requirements under 35 Ill. Adm. Code-Part 309 for the term of the time-limited water quality standard. Any limitations and requirements necessary to implement the time-limited water quality standard must be included as enforceable conditions of the ~~National-Pollutant Discharge Elimination System~~NPDES permit for any permittee granted coverage under the time-limited water quality standard by the Board or Agency.

e) The Agency may use an approved time-limited water quality standard when issuing certifications under ~~Section~~section 401 of the Clean Water Act.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.510 Severability

If any provision of this Subpart or its application to any person is adjudged invalid, the adjudication does not affect the validity as a whole or of any portion not adjudged invalid.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.515 Definitions

a) Unless defined in subsection (b), words ~~must~~shall have the meaning ~~as defined~~ascribed in the Act and 35 Ill. Adm. Code 101. Subpart B.

b) The following definitions must apply to this ~~subpart~~Subpart:

"Pollutant Minimization Program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.

~~A~~"time"Time-limited water quality standard" means a time-limited designated use and criterion for a specific pollutant or water quality parameter that reflects the highest attainable condition during the term of the time-limited water quality standard.

~~"Pollutant minimization program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.~~

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.520 General Procedures

a) A time-limited water quality standard may be sought for multiple uses and multiple parameters by:

1) persons who file with the Board a petition for a time-limited water quality standard under Section 38.5 of the Act; and

2) persons who have a pending petition on February 24, 2017 for a variance from a water quality standard under Section 35 of the Act converted into a petition for a time-limited water quality standard under Section 38.5 of the Act.

b) Parties

1) ~~Petitioner~~

A) For a single discharger time-limited water quality standard, the person seeking the time-limited water quality standard must be named the Petitioner.

B) For multiple discharger, watershed, waterbody, and waterbody segment time-limited water quality ~~standard~~ standards, all dischargers seeking the time-limited water quality standard may act collectively as a single petitioner after the Board has established classes under Section 104.540.

2) The Agency must be a participant.

3) Any person may become a participant in the time-limited water quality standard proceeding.

4) The Board must develop and maintain a notice list of persons and organizations that have expressed an interest in, or may, by the nature of their purposes, activities or members, be affected by, any covered activity. The Board must include in the notice list all dischargers or classes of dischargers affected by the water quality standard requested in the petition or amended petition as identified by the Agency under Section 104.535(b)(1).

c) Filing and Service. Unless otherwise provided by this Part, all documents must be served and filed in accordance with 35 Ill. Adm. Code 101.Subpart C.

BOARD NOTE: The Board encourages persons addressing the same pollutants in the same waterbody, waterbody segment or watershed to join in filing a joint petition whenever possible, collectively satisfying the burden of proof ~~as~~ outlined in Section 104.555. When multiple petitions addressing the same pollutants in the same waterbody, waterbody segment or watershed are filed separately, the Board may join additional parties under 35 Ill. Adm. Code 101.403 and/or ~~to~~ consolidate the petitions under 35 Ill. Adm. ~~code~~ Code 101.406. The Board also may incorporate materials and evidence filed in support of one petition as evidence in support of a petition addressing similar issues. (See 35 Ill. Adm. Code 101.306.)

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 104.525 Stay

a) The effectiveness of a water quality standard from which relief is sought must be stayed as to the following persons from the effective date of the water quality standard until the stay is terminated as provided in this Section:

1) any person who has a petition for a variance seeking relief from a water quality standard under Section 35 of the Act converted into a petition for a time-limited water quality standard under Section 38.5 of the Act;

2) any person who files a petition for a time-limited water quality standard within 35 days after the effective date of the water quality standard from which relief is sought; and

3) any person who is a member of a class of dischargers that is identified in a Board order under Section 104.540 that concerns a petition for a time-limited water quality standard that was filed within 35 days after the effective date of the water quality standard from which relief is sought and who files a petition for a time-limited water quality standard before the deadline established for that class under Section 104.540.

b) For any person for which the effectiveness of the water quality standard is stayed under subsection (a), and the Board has determined that his or her petition is in substantial compliance as provided in Section 104.545, the stay must continue until the Board:

1) denies the petition and all rights to judicial review of the Board's order denying the petition are exhausted; or

2) adopts the time-limited water quality standard and the United States Environmental Protection Agency either:

A) approves the time-limited water quality standard; or

B) disapproves the time-limited water quality standard for failure to comply with 40 ~~C.F.R.~~CFR 131.14.

c) For any person for which the effectiveness of the water quality standard is stayed under subsection (a), and the Board has determined that his or her petition is not in substantial compliance as provided in Section 104.545, the following must apply:

1) if the person files an amended petition by the deadline established by the Board in Section ~~104.540,~~104.540 and the amended petition is in substantial compliance as provided in Section ~~104.545-~~then 104.545. the stay must continue until the Board:

A) denies the petition and all rights to judicial review of the Board's order denying the petition are exhausted; or

B) adopts the time-limited water quality standard and ~~the United States Environmental Protection Agency~~ USEPA either:

i) approves the time-limited water quality standard; or

ii) disapproves the time-limited water quality standard for failure to comply with 40 ~~C.F.R.~~ CFR 131.14.

2) if the person files an amended petition by the deadline established by the Board in Section 104.540, but the amended petition is not in substantial compliance as provided in Section 104.545, ~~then~~ the Board must deny the amended petition, and the stay must continue until all rights to judicial review are exhausted.

3) if the person fails to file an amended petition by the deadline established by the Board in Section 104.540, the Board must dismiss the original petition and the stay must continue until all rights to judicial review are exhausted.

d) If a person other than a person described in subsection (a) files a petition for a time-limited water quality standard, ~~then~~ the effectiveness of the water quality standard from which relief is sought must not be stayed as to that person, but the person may proceed with his or her petition for a time-limited water quality standard by complying with 40 ~~C.F.R.~~ CFR 131.14, Section 38.5 of the Act, and ~~the rules under~~ this Part.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 104.530 Petition Contents

a) All time-limited water quality standard petitions or amended petitions must include:

1) A statement indicating the type of time-limited water quality standard sought:

A) single discharger~~7.1~~

B) multiple dischargers~~7.1~~ or

C) watershed, water body, or waterbody segment;

2) identification of the pollutant or water quality parameter for which a time-limited water quality standard is sought;

- 3) the location of the petitioner's activity and the location of the points of its discharge;
- 4) a map of the proposed watershed, water body or waterbody segment to which the time-limited water quality standard will apply;
- 5) designated uses of the ~~waterbody~~water body or waterbody segment identified in subsection (a) (4);
- 6) data describing the nature and extent of the present or anticipated failure to meet the water quality standard or standards and facts that support compliance with the water quality standards regulation or regulations cannot be achieved by any required compliance date;
- 7) a demonstration that attainment of the designated use~~(s)~~ or uses and criterion~~(ia)~~ or criteria is not feasible throughout the term of the time-limited water quality standard because of one or more of the factors listed in Section 104.560(b).
- 8) an identification, including the Board's docket number, of any prior water quality standards variances/time-limited water quality standards issued to the petitioner, watershed, water body, waterbody segment, and, if known, the petitioner's predecessors, concerning similar relief;
- 9) an identification, by name and permit number, of the permits held by dischargers ~~which~~that may be affected by the adoption of the time-limited water quality standard;
- 10) an identification and description of any process, activity, or source that contributes to a violation of a water quality standard, including the material used in that process or activity
- 11) a description and copy of all pollution minimization plans currently being implemented or have been implemented;
- 12) the proposed highest attainable condition of the watershed, water body, or waterbody segment identified in subsection (a) (4) expressed as set forth in Section 104.565(d) (4), including projected changes in the highest attainable condition throughout the proposed term of the time-limited water quality standard;
- 13) a demonstration of the pollutant control activities proposed to achieve the highest attainable condition, including those activities identified through a Pollutant Minimization Program;
- 14) the proposed term of the time-limited water quality standard that is only as long as necessary to achieve the highest attainable condition, which includes a description of the relationship between the proposed pollution control activities and the proposed term;

15) a proposed reevaluation schedule to reevaluate the highest attainable condition during the term of the time-limited water quality standard, if the proposed term of the time-limited water quality standard is longer than five years under Section 104.580; and

16) any other documentation required to support the petitioner's burden of proof in Section 104.560.

b) For a watershed, water body or waterbody segment time-limited water quality standard, the petition or amended petition must also include:

1) identification and documentation of any cost-effective and reasonable best management practices for ~~non-point~~nonpoint source controls related to the pollutant or water quality parameter and watershed, water body, or waterbody segment specified in the time-limited water quality standard that could be implemented to make progress towards attaining the underlying designated use and criterion; and

2) if the petition is for an extension of an existing water quality standard, an explanation of the extent best management practices for ~~non-point~~nonpoint source controls were implemented to address the pollutant or water quality parameter subject to the time-limited water quality standard and the water quality progress achieved.

c) For a watershed, water body or waterbody segment time-limited water quality standard, the petition or amended petition may also include proposed eligibility criteria to be adopted by the Board to be used at the time of renewal or modification of an individual's federal ~~National Pollutant Discharge Elimination System~~NPDES permit or at the time an individual files an application for certification under ~~Section~~section 401 of the federal Clean Water Act to obtain coverage under a Board-approved time-limited water quality standard.

d) For a multiple discharger time-limited water quality standard, the petition may include proposed eligibility criteria to be adopted by the Board to be used at the time of renewal or modification of an individual's federal ~~National Pollutant Discharge Elimination System~~NPDES permit or at the time an individual files an application for certification under ~~Section~~section 401 of the federal Clean Water Act to obtain coverage under a Board-approved time-limited water quality standard.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

a) The Agency must file a response with the Board within 21 days after the filing of the initial petition.

b) The Agency response must:

1) identify the discharger or classes of dischargers, including applicable permit numbers, affected by the water quality standard or standards from which relief is sought in the petition;

2) identify the watershed, water bodies, or waterbody segments, including the receiving stream, affected by the water quality standard or standards from which relief is sought in the petition;

3) identify the appropriate type of time-limited water quality standard, based on factors, such as the nature of the pollutant, the condition of the affected water body, and the number and type of dischargers; and

4) recommend prompt deadlines by which each class of dischargers identified in subsection (b)(1) must file a substantially compliant petition to stay the effectiveness of a water quality standard or standards under Section 104.525.

c) The petitioner or any person may file a question or response to the Agency's response within 14 days after the Agency files its response.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.540 Board Established Classes and Deadlines

Within 30 days after receipt of a response from the Agency under Section 104.535, the Board must enter a final order ~~which that~~ delineates the geographic scope of the time-limited water quality standard, ~~and~~ establishes the discharger or classes of dischargers that may be covered by the time-limited water quality standard, and establishes prompt deadlines by which the discharger and dischargers in the identified classes must, for the purposes of the stay, file with the Board either:

a) a petition for a time-limited water quality standard, if the petition has not been previously filed; or

b) an amended petition for a time-limited water quality standard, if the petition has been previously filed and it is necessary to file an amended petition to maintain a stay under Section 104.525.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.545 Substantial Compliance Assessment

a) As soon as practicable after entering an order under Section 104.540, the Board must conduct an evaluation of the petition to assess its substantial compliance with Section 104.530.

b) If the Board determines in a final order that the petition is in substantial compliance, the Agency must file a recommendation under Section 104.550.

c) If the Board determines in an interim order that the petition is not in substantial compliance, ~~then~~ the Board must identify the deficiencies in the petition that must be corrected for the petition to be in substantial compliance with Section 104.530.

d) If effectiveness of the water quality standard from which relief is sought is stayed under Section 104.525 and the Board determines in an interim order that the petition is not in substantial compliance ~~then~~:

1) the petitioner must file an amended petition by the deadlines adopted by the Board under Section 104.540; and

2) the Board must enter, after the deadlines established under Section 104.540, a final order that determines whether the amended petition is in substantial compliance with Section 104.530

e) Any party may file a motion for reconsideration under 35 Ill. Adm. Code 101.520 of a final Board order determining whether the amended petition is in substantial compliance with Section 104.530.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.550 Recommendation and Response

a) Unless otherwise ordered by the hearing officer or the Board, the Agency must file a recommendation with the Board within 45 days after the Board determines that a petition is in substantial compliance under Section 104.545.

b) At a minimum, the recommendation must include:

1) The Agency's analysis of:

A) whether the petitioner met its burden of proof as specified in Section 104.560, including petitioner's proposed highest attainable condition of the watershed, water body, or waterbody segment;

B) whether the proposed time-limited water quality standard is consistent with applicable federal laws and regulations, and satisfies the requirements of Section 38.5 of the Act and ~~the rules under~~ this Part; and

C) the petitioner's proposed eligibility criteria to be adopted by the Board to be used at the time of renewal or modification of an

individual's federal ~~National Pollutant Discharge Elimination System~~ NPDES permit or at the time an individual files an application for certification under ~~Section~~ section 401 of the federal Clean Water Act to obtain coverage under a Board-approved time-limited water quality standard, when applicable;

2) any information the Agency believes relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;

3) whether the Board should adopt, adopt with conditions, or deny the petitioner's requested time-limited water quality standard; and

4) the Agency's recommended term of the time-limited water quality standard.

c) The petitioner or any person may file a question or response to the Agency's recommendation within 14 days after the Agency files its recommendation.

d) Concurrent with the filing of the recommendation with the Board, the Agency must transmit a copy of its recommendation, including a copy of the time-limited water quality standard petition, to USEPA.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.555 Hearing

a) The Board must hold a public hearing on the petition.

b) Hearing Notice

1) The Hearing Officer will schedule the hearing, and give the petitioner, participants and those individuals on the notice list maintained by the Board under Section 104.520(b)(4) at least 45 days' written notice of a hearing.

2) The Clerk must publicize notice, both on the Board's website and in a newspaper of general circulation in the county where the facility or pollution source is located, within 45 days of the hearing.

3) The notice must identify the matters to be discussed at the hearing and must include information on the availability of relevant materials and procedures for obtaining further information.

4) For a watershed, water body, or waterbody segment time-limited water quality standard, the notice must include identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant or water quality parameter and water body or waterbody segment specified in the petitioned time-limited water quality standard that could be implemented

to make progress towards attaining the underlying designated use and criterion.

c) The Board must make the following available to the public at least 30 days before the hearing:

1) reports, documents, data relevant to the discussion at the public hearing;

2) the Agency recommendation; and

3) for watershed, ~~waterbody, and~~ water body, and waterbody segment time-limited water quality standard petitions, the proposed best management practices for ~~non-point~~nonpoint source controls.

d) Except as otherwise provided in this Section, the hearings will be conducted under 35 Ill. Adm. Code 101.Subpart F.

e) The Hearing Officer must schedule witnesses in advance to ensure maximum participation and allotment of adequate time. The Hearing Officer must reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.

f) During the hearing, the Hearing Officer must inform the audience of the issues involved in the decision to be made, the considerations the Board will take into account, and the information ~~which~~that is particularly solicited from the public.

g) Public comments must be filed within 21 days after the hearing transcript is available unless the Hearing Officer specifies a different date. Any person may file written comments in a time-limited water quality standard.

h) The ~~Illinois EPA~~Agency must notify USEPA of the availability of the hearing transcript and inform USEPA of the comment deadline.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.560 Burden of Proof

a) The burden of proof is on the petitioner.

b) The petitioner must provide justification that attainment of the designated use and criterion is not feasible throughout the term of the time-limited water quality standard because of one of the following factors:

1) Naturally occurring pollutant concentrations prevent the attainment of the use;

2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be

compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met;

3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate that modification in a way that would result in the attainment of the use;

5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;

6) Controls more stringent than those required by ~~Sections~~sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact; or

7) Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

c) The petitioner must demonstrate that the term of the time-limited water quality standard is only as long as necessary to achieve the highest attainable condition. This demonstration must justify the term of the time-limited water quality standard by describing the pollutant control activities to achieve the highest attainable condition, including those activities through a Pollutant Minimization Program.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 104.565 Opinion and Order

a) ~~Where~~When the Board adopts a time-limited water quality standard, the Board must maintain, in its standards, the underlying designated use and criterion addressed by the time-limited water quality standard, unless the Board adopts and ~~United States Environmental Protection Agency~~USEPA approves a revision to the underlying designated use and criterion consistent with 40 ~~C.F.R.~~CFR 131.10 and §131.11.

b) A time-limited water quality standard may not be adopted if the designated use and criterion addressed by the time-limited water quality standard can be achieved by implementing technology based effluent limits required under ~~Sections~~sections 301(b) and 306 of the Clean Water Act and 35 Ill. Adm. Code ~~Part~~ 304.

c) The Board may not adopt a time-limited water quality standard if petitioner fails to meet its burden of proof as set forth in Section 104.560.

d) All orders adopting a time-limited water quality standard must include:

- 1) Identification of the pollutant or water quality parameter;
- 2) Applicability
  - A) Watershed, Water Body, Waterbody Segment and Multiple Discharger
    - i) identification of the watershed, water body, or waterbody segment to which the time-limited water quality standard applies;
    - ii) eligibility criteria that may be used by new or existing dischargers or classes of dischargers to obtain coverage under the time-limited water quality standard during its duration; and
    - iii) the list of persons covered under the time-limited water quality standard at the time of the Board's adoption.

B) Single Discharger

- i) identification of the water body, or waterbody segment to which the time-limited water quality standard applies; and
- ii) the person covered under the time-limited water quality standard.

3) The time-limited water quality standard requirements and conditions that apply throughout the term of the time-limited water quality standard:

A) must represent the highest attainable condition of the watershed, water body, or waterbody segment applicable throughout the term of the time-limited water quality standard based on petitioner's demonstration required by Section 104.560; and

B) must not result in any lowering of the currently attained ambient water quality, unless the petitioner demonstrates that a time-limited water quality standard is necessary for restoration activities under Section 104.560(b)(7).

4) The highest attainable condition of the waterbody or water segment as a quantifiable expression of one of the following:

A) For a single discharger and a multiple discharger time-limited water quality standard:

- i) The highest attainable interim criterion;

ii) The interim effluent condition that reflects the greatest pollutant reduction achievable; or

iii) If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the Board adopts the time-limited water quality standard, and the adoption and implementation of a Pollutant Minimization Program.

B) For a time-limited water quality standard applicable to a watershed, water body, or a waterbody segment:

i) The highest attainable interim use and interim criterion; or

ii) If no additional feasible pollutant control technology can be identified, the interim use and interim criterion that reflect the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the Board adopts the time-limited water quality standard, and the adoption and implementation of a Pollutant Minimization Program.

5) A statement providing that the requirements of the time-limited water quality standard are either the highest attainable condition identified at the time of the adoption of the time-limited water quality standard, or the highest attainable condition later identified during any reevaluation consistent with Section 104.580, whichever is more stringent.

6) The term of the time-limited water quality standard, expressed as an interval of time from the date of ~~United States Environmental Protection Agency~~USEPA approval or a specific date.

7) For a time-limited water quality standard with a term greater than five years, a specified frequency to reevaluate the highest attainable condition pursuant Section~~104.580, that 104.580.~~ The reevaluation must occur no less frequently than every five years after both Board and ~~United States Environmental Protection Agency~~USEPA approval of the time-limited water quality standard.

8) A provision that the time-limited water quality standard will no longer be the applicable water quality standard for purposes of the Clean Water Act if the petitioner does not conduct a reevaluation consistent with the frequency specified in the time-limited water quality standard or the results are not submitted to ~~the United States Environmental Protection Agency~~USEPA as required by Section 104.580.

e) Any party may file a motion for reconsideration, under ~~the rules in Section 101.520~~35 Ill. Adm. Code 101.520. of a final Board order entered under this Section.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 104.570 USEPA Review

a) Before a time-limited water quality standard becomes effective for Clean Water Act purposes, the Agency must submit the time-limited water quality standard to ~~the United States Environmental Protection Agency~~USEPA and obtain ~~the United States Environmental Protection Agency's~~USEPA approval in accordance with ~~Section~~section 303(c) of the Clean Water Act and 40 C.F.R. ~~§§~~CFR 131.20 and 131.21.

b) The Agency must file ~~the United States Environmental Protection Agency~~USEPA's decision with the Board.

c) If USEPA disapproves of a Board adopted time-limited water quality standard, the petitioner may file a Petition to Modify a Time-Limited Water Quality Standard.

1) The petition to modify must address all deficiencies raised by USEPA and must be served on all parties to the Board's proceeding adopting the time-limited water quality standard.

2) The Board must automatically incorporate the record from the Board's proceeding adopting the time-limited water quality standard.

3) The Board must accept public comments for at least 30 days after a petition to modify is filed.

4) If the Board, in its discretion, concludes a hearing would be advisable, ~~then~~a hearing must be held.

5) Any order issued by the Board modifying a previously granted time-limited water quality standard must comply with Section 104.565.

6) The Agency must submit any order issued by the Board modifying a previously granted time-limited water quality standard to USEPA for review and approval.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 104.575 Coverage Under Board-Approved Time-Limited Water Quality ~~Standard~~Standards

a) Any discharger that has not obtained a time-limited water quality standard may obtain coverage under a Board-approved time-limited water quality standard by satisfying, at the time of renewal or modification of that person's ~~federal National Pollutant Discharge Elimination System~~(NPDES)NPDES permit, or at the time the person files an application for certification under ~~Section~~section 401 of the federal Clean Water Act, the Board-approved criteria for coverage under the time-limited water quality standard.

b) Any applicant obtaining coverage under a Board-approved time-limited water quality standard must comply with the requirements and conditions that apply throughout the term of the time-limited water quality standard established under Section 104.565(d) (3).

c) Any applicant obtaining coverage under a Board-approved time-limited water quality standard must participate in any reevaluations conducted under Section 104.580.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.580 Reevaluation

a) Proposed ~~reevaluation~~Reevaluation. When a time-limited water quality standard has a term greater than five years and the Board accordingly sets a schedule for reevaluation:

1) The petitioner and any person granted coverage under Section 104.575 must file its proposed reevaluation with the Board according to the reevaluation frequency set forth in the Board's order adopting the time-limited water quality standard under Section 104.565(d) (7).

2) Petitioner must serve one copy of the proposed reevaluation on the Agency, each participant, and each member of the notice list maintained by the Board under Section 104.520(b) (4).

3) The proposed reevaluation must assess the highest attainable condition using all existing and readily available information.

b) The clerk must publicize notice of the proposed reevaluation on the Board's website and in a newspaper of general circulation in the county where the facility or pollution source is located.

c) The Board must accept public comments for a period not shorter than 30 days.

d) The Board must reevaluate the highest attainable conditions using all existing and readily available information.

e) The Agency must submit the Board's reevaluation opinion and order to ~~the United States Environmental Protection Agency~~EPA for approval within 30 days ~~of~~after issuance of the Board's order.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 104.585 Appeal Rights

Any person who is adversely affected or ~~threatened~~threatened by a final Board order entered under this Subpart may obtain judicial review of the Board order by filing a petition for review within 35 days after the date the Board order was served on the person affected by the order, under the provisions of the Administrative Review Law [735 ILCS 5/Art.]

Ill, and the rules adopted pursuant thereto, except that review ~~must~~shall be afforded directly in the appellate court for the district in which the cause of action arose and not in the circuit court. For purposes of judicial review under this Section, a person is deemed to have been served with the Board's final order on the date on which the order is first published by the Board on its website. [415 ILCS 5/38.5(j)]-

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 104.590 Extension

a) If, at the end of the time-limited water quality standard, the underlying designated use remains unattainable, the petitioner may seek an extension of an existing time-limited water quality standard, consistent with the requirements of this Subpart.

b) A petition to extend a time-limited water quality standard previously granted by the Board is a new petition for a time-limited water quality standard before the Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code 101.Subpart C, including payment of the filing fee under Section 104.520(c) and 35 Ill. Adm. Code 101.302(e) (6).

c) In addition to the requirements of Section 104.530, the petition for extension of the time-limited water quality standard must contain:

1) A detailed explanation showing that satisfactory progress toward attaining the designated use has been made during the term of the prior time-limited water quality standard and that additional time is needed to make further progress;

2) a demonstration of whether conditions have changed such that the designated use and criterion are not attainable;

3) a demonstration of whether new or additional information has become available to indicate that the designated use and criterion are not attainable in the future;

4) documentation showing that the requirements and conditions established by the Board that applied throughout the term of the prior time-limited water quality standard have been fully met, or, if any requirement or condition has not been fully met, a detailed explanation of the reason or reasons that the requirement has not been fully met; and

5) a motion to incorporate any material from the record of the prior time-limited water quality standard proceeding in accordance with 35 Ill. Adm. Code 101.306.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Style change	0
Format changed	0
Total changes	172

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 104  
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

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STATE OF ILLINOIS  
Pollution Control Board

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12	104.102	Severability
13	104.104	Definitions
14	104.106	Petitions and Hearings

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20	104.202	Filing Requirements
21	104.204	Petition Content Requirements
22	104.206	RCRA Variance Petition Contents
23	104.208	Consistency with Federal Law
24	104.210	Petition for Extension of Variance
25	104.212	Motion for Modification of Internal Variance Compliance Dates
26	104.214	Notice of Petition
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28	104.218	Agency Recommendation to RCRA Variance
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31	104.224	Objections to Petition, Written Comments, and Request for Hearing
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39	104.240	Certificate of Acceptance
40	104.242	Term of Variance
41	104.244	Variance Conditions
42	104.246	Performance Bonds
43	104.248	Objection to Conditions

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SUBPART C: PROVISIONAL VARIANCES

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- 104.304 Initiating a Request
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- 104.525 Stay
- 104.530 Petition Contents
- 104.535 Agency Response
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87 104.545 Substantial Compliance Assessment  
 88 104.550 Recommendation and Response  
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 90 104.560 Burden of Proof  
 91 104.565 Opinion and Order  
 92 104.570 USEPA Review  
 93 104.575 Coverage Under Board-Approved Time-Limited Water Quality Standards  
 94 104.580 Reevaluation  
 95 104.585 Appeal Rights  
 96 104.590 Extension

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104.APPENDIX A Comparison of Former and Current Rules (Repealed)

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AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart E: Implementing and authorized by Sections 4, 5, and 38.5 of the Act [415 ILCS 5/5 and 38.5].

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SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12905, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7973, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. 10049, effective July 5, 2017; amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

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SUBPART E: TIME-LIMITED WATER QUALITY STANDARDS

**Section 104.500 Purpose**

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- a) This Subpart sets forth procedures for obtaining a time-limited water quality standard. A time-limited water quality standard provides relief from water quality standards as set forth in 35 Ill. Adm. Code 302 and 303.
- b) This Subpart must be read in conjunction with 35 Ill. Adm. Code 101. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

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(Source: Added at 41 Ill. Reg.\_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.505 Applicability and Use**

- a) A time-limited water quality standard proceeding is a non-adjudicatory proceeding.
- b) A time-limited water quality standard may be adopted for a single discharger, multiple dischargers, a watershed, a water body, or a waterbody segment.
- c) The extent and coverage of a time-limited water quality standard must be set forth in the Board's order as specified in Section 104.565.
- d) A time-limited water quality standard, once adopted by the Board and approved by United States Environmental Protection Agency, must be the applicable standard for the purposes of the Clean Water Act in developing NPDES permit limits and requirements under 35 Ill. Adm. Code 309 for the term of the time-limited water quality standard. Any limitations and requirements necessary to implement the time-limited water quality standard must be included as enforceable conditions of the NPDES permit for any permittee granted coverage under the time-limited water quality standard by the Board or Agency.
- e) The Agency may use an approved time-limited water quality standard when issuing certifications under section 401 of the Clean Water Act.

(Source: Added at 41 Ill. Reg.\_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.510 Severability**

If any provision of this Subpart or its application to any person is adjudged invalid, the adjudication does not affect the validity as a whole or of any portion not adjudged invalid.

(Source: Added at 41 Ill. Reg.\_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.515 Definitions**

- a) Unless defined in subsection (b), words shall have the meaning ascribed in the Act and 35 Ill. Adm. Code 101.Subpart B.
- b) The following definitions must apply to this Subpart:

172 "Pollutant Minimization Program" means a structured set of activities to  
173 improve processes and pollutant controls that will prevent and reduce  
174 pollutant loading.

175  
176 "Time-limited water quality standard" means a time-limited designated  
177 use and criterion for a specific pollutant or water quality parameter that  
178 reflects the highest attainable condition during the term of the time-limited  
179 water quality standard.

180  
181 (Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

182

183 **Section 104.520 General Procedures**

184

185 a) A time-limited water quality standard may be sought for multiple uses and  
186 multiple parameters by:

187

188 1) persons who file with the Board a petition for a time-limited water quality  
189 standard under Section 38.5 of the Act; and

190

191 2) persons who have a pending petition on February 24, 2017 for a variance  
192 from a water quality standard under Section 35 of the Act converted into a  
193 petition for a time-limited water quality standard under Section 38.5 of the  
194 Act.

195

196 b) Parties

197

198 1) Petitioner

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200 A) For a single discharger time-limited water quality standard, the  
201 person seeking the time-limited water quality standard must be  
202 named the Petitioner.

203

204 B) For multiple discharger, watershed, waterbody, and waterbody  
205 segment time-limited water quality standards, all dischargers  
206 seeking the time-limited water quality standard may act  
207 collectively as a single petitioner after the Board has established  
208 classes under Section 104.540.

209

210 2) The Agency must be a participant.

211

212 3) Any person may become a participant in the time-limited water quality  
213 standard proceeding.

214

215 4) The Board must develop and maintain a notice list of persons and  
216 organizations that have expressed an interest in, or may, by the nature of  
217 their purposes, activities or members, be affected by, any covered activity.  
218 The Board must include in the notice list all dischargers or classes of  
219 dischargers affected by the water quality standard requested in the petition  
220 or amended petition as identified by the Agency under Section  
221 104.535(b)(1).

222  
223 c) Filing and Service. Unless otherwise provided by this Part, all documents must  
224 be served and filed in accordance with 35 Ill. Adm. Code 101.Subpart C.  
225

226 BOARD NOTE: The Board encourages persons addressing the same pollutants in the  
227 same waterbody, waterbody segment or watershed to join in filing a joint petition  
228 whenever possible, collectively satisfying the burden of proof outlined in Section  
229 104.555. When multiple petitions addressing the same pollutants in the same waterbody,  
230 waterbody segment or watershed are filed separately, the Board may join additional  
231 parties under 35 Ill. Adm. Code 101.403 and/or consolidate the petitions under 35 Ill.  
232 Adm. Code 101.406. The Board also may incorporate materials and evidence filed in  
233 support of one petition as evidence in support of a petition addressing similar issues. (See  
234 35 Ill. Adm. Code 101.306.)

235  
236 (Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
237

238 **Section 104.525 Stay**

239  
240 a) The effectiveness of a water quality standard from which relief is sought must be  
241 stayed as to the following persons from the effective date of the water quality  
242 standard until the stay is terminated as provided in this Section:  
243

244 1) any person who has a petition for a variance seeking relief from a water  
245 quality standard under Section 35 of the Act converted into a petition for a  
246 time-limited water quality standard under Section 38.5 of the Act;  
247

248 2) any person who files a petition for a time-limited water quality standard  
249 within 35 days after the effective date of the water quality standard from  
250 which relief is sought; and  
251

252 3) any person who is a member of a class of dischargers that is identified in a  
253 Board order under Section 104.540 that concerns a petition for a time-  
254 limited water quality standard that was filed within 35 days after the  
255 effective date of the water quality standard from which relief is sought and  
256 who files a petition for a time-limited water quality standard before the  
257 deadline established for that class under Section 104.540.

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b) For any person for which the effectiveness of the water quality standard is stayed under subsection (a), and the Board has determined that his or her petition is in substantial compliance as provided in Section 104.545, the stay must continue until the Board:

1) denies the petition and all rights to judicial review of the Board's order denying the petition are exhausted; or

2) adopts the time-limited water quality standard and the United States Environmental Protection Agency either:

A) approves the time-limited water quality standard; or

B) disapproves the time-limited water quality standard for failure to comply with 40 CFR 131.14.

c) For any person for which the effectiveness of the water quality standard is stayed under subsection (a), and the Board has determined that his or her petition is not in substantial compliance as provided in Section 104.545, the following must apply:

1) if the person files an amended petition by the deadline established by the Board in Section 104.540 and the amended petition is in substantial compliance as provided in Section 104.545, the stay must continue until the Board:

A) denies the petition and all rights to judicial review of the Board's order denying the petition are exhausted; or

B) adopts the time-limited water quality standard and USEPA either:

i) approves the time-limited water quality standard; or

ii) disapproves the time-limited water quality standard for failure to comply with 40 CFR 131.14.

2) if the person files an amended petition by the deadline established by the Board in Section 104.540, but the amended petition is not in substantial compliance as provided in Section 104.545, the Board must deny the amended petition, and the stay must continue until all rights to judicial review are exhausted.

301                   3)     if the person fails to file an amended petition by the deadline established  
302                   by the Board in Section 104.540, the Board must dismiss the original  
303                   petition and the stay must continue until all rights to judicial review are  
304                   exhausted.

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306                   d)     If a person other than a person described in subsection (a) files a petition for a  
307                   time-limited water quality standard, the effectiveness of the water quality standard  
308                   from which relief is sought must not be stayed as to that person, but the person  
309                   may proceed with his or her petition for a time-limited water quality standard by  
310                   complying with 40 CFR 131.14, Section 38.5 of the Act, and this Part.

311  
312                   (Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

313  
314     **Section 104.530 Petition Contents**

315  
316                   a)     All time-limited water quality standard petitions or amended petitions must  
317                   include:

318  
319                   1)     A statement indicating the type of time-limited water quality standard  
320                   sought:

321  
322                   A)     single discharger;

323  
324                   B)     multiple dischargers; or

325  
326                   C)     watershed, water body, or waterbody segment;

327  
328                   2)     identification of the pollutant or water quality parameter for which a time-  
329                   limited water quality standard is sought;

330  
331                   3)     the location of the petitioner's activity and the location of the points of its  
332                   discharge;

333  
334                   4)     a map of the proposed watershed, water body or waterbody segment to  
335                   which the time-limited water quality standard will apply;

336  
337                   5)     designated uses of the water body or waterbody segment identified in  
338                   subsection (a)(4);

339  
340                   6)     data describing the nature and extent of the present or anticipated failure to  
341                   meet the water quality standard or standards and facts that support  
342                   compliance with the water quality standards regulation or regulations  
343                   cannot be achieved by any required compliance date;

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- 7) a demonstration that attainment of the designated use or uses and criterion or criteria is not feasible throughout the term of the time-limited water quality standard because of one or more of the factors listed in Section 104.560(b).
  - 8) an identification, including the Board's docket number, of any prior water quality standards variances/time-limited water quality standards issued to the petitioner, watershed, water body, waterbody segment, and, if known, the petitioner's predecessors, concerning similar relief;
  - 9) an identification, by name and permit number, of the permits held by dischargers that may be affected by the adoption of the time-limited water quality standard;
  - 10) an identification and description of any process, activity, or source that contributes to a violation of a water quality standard, including the material used in that process or activity
  - 11) a description and copy of all pollution minimization plans currently being implemented or have been implemented;
  - 12) the proposed highest attainable condition of the watershed, water body, or waterbody segment identified in subsection (a)(4) expressed as set forth in Section 104.565(d)(4), including projected changes in the highest attainable condition throughout the proposed term of the time-limited water quality standard;
  - 13) a demonstration of the pollutant control activities proposed to achieve the highest attainable condition, including those activities identified through a Pollutant Minimization Program;
  - 14) the proposed term of the time-limited water quality standard that is only as long as necessary to achieve the highest attainable condition, which includes a description of the relationship between the proposed pollution control activities and the proposed term;
  - 15) a proposed reevaluation schedule to reevaluate the highest attainable condition during the term of the time-limited water quality standard, if the proposed term of the time-limited water quality standard is longer than five years under Section 104.580; and

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- 16) any other documentation required to support the petitioner's burden of proof in Section 104.560.
  
- b) For a watershed, water body or waterbody segment time-limited water quality standard, the petition or amended petition must also include:
  - 1) identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant or water quality parameter and watershed, water body, or waterbody segment specified in the time-limited water quality standard that could be implemented to make progress towards attaining the underlying designated use and criterion; and
  - 2) if the petition is for an extension of an existing water quality standard, an explanation of the extent best management practices for nonpoint source controls were implemented to address the pollutant or water quality parameter subject to the time-limited water quality standard and the water quality progress achieved.
  
- c) For a watershed, water body or waterbody segment time-limited water quality standard, the petition or amended petition may also include proposed eligibility criteria to be adopted by the Board to be used at the time of renewal or modification of an individual's federal NPDES permit or at the time an individual files an application for certification under section 401 of the federal Clean Water Act to obtain coverage under a Board-approved time-limited water quality standard.
  
- d) For a multiple discharger time-limited water quality standard, the petition may include proposed eligibility criteria to be adopted by the Board to be used at the time of renewal or modification of an individual's federal NPDES permit or at the time an individual files an application for certification under section 401 of the federal Clean Water Act to obtain coverage under a Board-approved time-limited water quality standard.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.535 Agency Response**

- a) The Agency must file a response with the Board within 21 days after the filing of the initial petition.
  
- b) The Agency response must:

- 429 1) identify the discharger or classes of dischargers, including applicable
- 430 permit numbers, affected by the water quality standard or standards from
- 431 which relief is sought in the petition;
- 432
- 433 2) identify the watershed, water bodies, or waterbody segments, including the
- 434 receiving stream, affected by the water quality standard or standards from
- 435 which relief is sought in the petition;
- 436
- 437 3) identify the appropriate type of time-limited water quality standard, based
- 438 on factors such as the nature of the pollutant, the condition of the affected
- 439 water body, and the number and type of dischargers; and
- 440
- 441 4) recommend prompt deadlines by which each class of dischargers
- 442 identified in subsection (b)(1) must file a substantially compliant petition
- 443 to stay the effectiveness of a water quality standard or standards under
- 444 Section 104.525.
- 445
- 446 c) The petitioner or any person may file a question or response to the Agency's
- 447 response within 14 days after the Agency files its response.
- 448

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.540 Board Established Classes and Deadlines**

Within 30 days after receipt of a response from the Agency under Section 104.535, the Board must enter a final order that delineates the geographic scope of the time-limited water quality standard, establishes the discharger or classes of dischargers that may be covered by the time-limited water quality standard, and establishes prompt deadlines by which the discharger and dischargers in the identified classes must, for the purposes of the stay, file with the Board either:

- 458
- 459 a) a petition for a time-limited water quality standard, if the petition has not been
- 460 previously filed; or
- 461
- 462 b) an amended petition for a time-limited water quality standard, if the petition has
- 463 been previously filed and it is necessary to file an amended petition to maintain a
- 464 stay under Section 104.525.
- 465

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.545 Substantial Compliance Assessment**

469

- 470 a) As soon as practicable after entering an order under Section 104.540, the Board  
471 must conduct an evaluation of the petition to assess its substantial compliance  
472 with Section 104.530.  
473  
474 b) If the Board determines in a final order that the petition is in substantial  
475 compliance, the Agency must file a recommendation under Section 104.550.  
476  
477 c) If the Board determines in an interim order that the petition is not in substantial  
478 compliance, the Board must identify the deficiencies in the petition that must be  
479 corrected for the petition to be in substantial compliance with Section 104.530.  
480  
481 d) If effectiveness of the water quality standard from which relief is sought is stayed  
482 under Section 104.525 and the Board determines in an interim order that the  
483 petition is not in substantial compliance:  
484  
485 1) the petitioner must file an amended petition by the deadlines adopted by  
486 the Board under Section 104.540; and  
487  
488 2) the Board must enter, after the deadlines established under Section  
489 104.540, a final order that determines whether the amended petition is in  
490 substantial compliance with Section 104.530  
491  
492 e) Any party may file a motion for reconsideration under 35 Ill. Adm. Code 101.520  
493 of a final Board order determining whether the amended petition is in substantial  
494 compliance with Section 104.530.

495  
496 (Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
497

498 **Section 104.550 Recommendation and Response**  
499

- 500 a) Unless otherwise ordered by the hearing officer or the Board, the Agency must  
501 file a recommendation with the Board within 45 days after the Board determines  
502 that a petition is in substantial compliance under Section 104.545.  
503  
504 b) At a minimum, the recommendation must include:  
505  
506 1) The Agency's analysis of:  
507  
508 A) whether the petitioner met its burden of proof as specified in  
509 Section 104.560, including petitioner's proposed highest attainable  
510 condition of the watershed, water body, or waterbody segment;  
511

- 512                    B) whether the proposed time-limited water quality standard is  
513                    consistent with applicable federal laws and regulations, and  
514                    satisfies the requirements of Section 38.5 of the Act and this Part;  
515                    and  
516  
517                    C) the petitioner's proposed eligibility criteria to be adopted by the  
518                    Board to be used at the time of renewal or modification of an  
519                    individual's federal NPDES permit or at the time an individual files  
520                    an application for certification under section 401 of the federal  
521                    Clean Water Act to obtain coverage under a Board-approved time-  
522                    limited water quality standard, when applicable;  
523  
524                    2) any information the Agency believes relevant to the disposition of the  
525                    petition, including any past or pending enforcement actions against  
526                    petitioner;  
527  
528                    3) whether the Board should adopt, adopt with conditions, or deny the  
529                    petitioner's requested time-limited water quality standard; and  
530  
531                    4) the Agency's recommended term of the time-limited water quality  
532                    standard.  
533  
534                    c) The petitioner or any person may file a question or response to the Agency's  
535                    recommendation within 14 days after the Agency files its recommendation.  
536  
537                    d) Concurrent with the filing of the recommendation with the Board, the Agency  
538                    must transmit a copy of its recommendation, including a copy of the time-limited  
539                    water quality standard petition, to USEPA.  
540

541                    (Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
542

543 **Section 104.555 Hearing**  
544

- 545                    a) The Board must hold a public hearing on the petition.  
546  
547                    b) Hearing Notice  
548  
549                    1) The Hearing Officer will schedule the hearing and give the petitioner,  
550                    participants and those individuals on the notice list maintained by the  
551                    Board under Section 104.520(b)(4) at least 45 days' written notice of a  
552                    hearing.  
553

- 554           2)    The Clerk must publicize notice, both on the Board's website and in a  
555                    newspaper of general circulation in the county where the facility or  
556                    pollution source is located, within 45 days of the hearing.  
557
- 558           3)    The notice must identify the matters to be discussed at the hearing and  
559                    must include information on the availability of relevant materials and  
560                    procedures for obtaining further information.  
561
- 562           4)    For a watershed, water body, or waterbody segment time-limited water  
563                    quality standard, the notice must include identification and documentation  
564                    of any cost-effective and reasonable best management practices for  
565                    nonpoint source controls related to the pollutant or water quality parameter  
566                    and water body or waterbody segment specified in the petitioned time-  
567                    limited water quality standard that could be implemented to make progress  
568                    towards attaining the underlying designated use and criterion.  
569
- 570    c)    The Board must make the following available to the public at least 30 days before  
571            the hearing:  
572
- 573                    1)    reports, documents, data relevant to the discussion at the public hearing;  
574
- 575                    2)    the Agency recommendation; and  
576
- 577                    3)    for watershed, water body, and waterbody segment time-limited water  
578                    quality standard petitions, the proposed best management practices for  
579                    nonpoint source controls.  
580
- 581    d)    Except as otherwise provided in this Section, the hearings will be conducted  
582            under 35 Ill. Adm. Code 101.Subpart F.  
583
- 584    e)    The Hearing Officer must schedule witnesses in advance to ensure maximum  
585            participation and allotment of adequate time. The Hearing Officer must reserve  
586            some time for unscheduled testimony and may consider reserving blocks of time  
587            for major categories of witnesses.  
588
- 589    f)    During the hearing, the Hearing Officer must inform the audience of the issues  
590            involved in the decision to be made, the considerations the Board will take into  
591            account, and the information that is particularly solicited from the public.  
592
- 593    g)    Public comments must be filed within 21 days after the hearing transcript is  
594            available unless the Hearing Officer specifies a different date. Any person may  
595            file written comments in a time-limited water quality standard.  
596

597 h) The Agency must notify USEPA of the availability of the hearing transcript and  
598 inform USEPA of the comment deadline.

599

600 (Source: Added at 41 Ill. Reg.\_\_\_\_\_, effective \_\_\_\_\_)

601

602 **Section 104.560 Burden of Proof**

603

604 a) The burden of proof is on the petitioner.

605

606 b) The petitioner must provide justification that attainment of the designated use and  
607 criterion is not feasible throughout the term of the time-limited water quality  
608 standard because of one of the following factors:

609

610 1) Naturally occurring pollutant concentrations prevent the attainment of the  
611 use;

612

613 2) Natural, ephemeral, intermittent or low flow conditions or water levels  
614 prevent the attainment of the use, unless these conditions may be  
615 compensated for by the discharge of sufficient volume of effluent  
616 discharges without violating State water conservation requirements to  
617 enable uses to be met;

618

619 3) Human caused conditions or sources of pollution prevent the attainment of  
620 the use and cannot be remedied or would cause more environmental  
621 damage to correct than to leave in place;

622

623 4) Dams, diversions or other types of hydrologic modifications preclude the  
624 attainment of the use, and it is not feasible to restore the water body to its  
625 original condition or to operate that modification in a way that would  
626 result in the attainment of the use;

627

628 5) Physical conditions related to the natural features of the water body, such  
629 as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the  
630 like, unrelated to water quality, preclude attainment of aquatic life  
631 protection uses;

632

633 6) Controls more stringent than those required by sections 301(b) and 306 of  
634 the Clean Water Act would result in substantial and widespread economic  
635 and social impact; or

636

637 7) Actions necessary to facilitate lake, wetland, or stream restoration through  
638 dam removal or other significant reconfiguration activities preclude

639 attainment of the designated use and criterion while the actions are being  
640 implemented.

641  
642 c) The petitioner must demonstrate that the term of the time-limited water quality  
643 standard is only as long as necessary to achieve the highest attainable condition.  
644 This demonstration must justify the term of the time-limited water quality  
645 standard by describing the pollutant control activities to achieve the highest  
646 attainable condition, including those activities through a Pollutant Minimization  
647 Program.

648  
649 (Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
650

651 **Section 104.565 Opinion and Order**

652  
653 a) When the Board adopts a time-limited water quality standard, the Board must  
654 maintain, in its standards, the underlying designated use and criterion addressed  
655 by the time-limited water quality standard, unless the Board adopts and USEPA  
656 approves a revision to the underlying designated use and criterion consistent with  
657 40 CFR 131.10 and 131.11.

658  
659 b) A time-limited water quality standard may not be adopted if the designated use  
660 and criterion addressed by the time-limited water quality standard can be achieved  
661 by implementing technology based effluent limits required under sections 301(b)  
662 and 306 of the Clean Water Act and 35 Ill. Adm. Code 304.

663  
664 c) The Board may not adopt a time-limited water quality standard if petitioner fails  
665 to meet its burden of proof as set forth in Section 104.560.

666  
667 d) All orders adopting a time-limited water quality standard must include:

668  
669 1) Identification of the pollutant or water quality parameter;

670  
671 2) Applicability

672  
673 A) Watershed, Water Body, Waterbody Segment and Multiple  
674 Discharger

675  
676 i) identification of the watershed, water body, or waterbody  
677 segment to which the time-limited water quality standard  
678 applies;

679  
680 ii) eligibility criteria that may be used by new or existing  
681 dischargers or classes of dischargers to obtain coverage

- 682                                   under the time-limited water quality standard during its  
683                                   duration; and  
684  
685                                   iii)    the list of persons covered under the time-limited water  
686                                   quality standard at the time of the Board's adoption.  
687  
688                                   B)    Single Discharger  
689  
690                                   i)    identification of the water body or waterbody segment to  
691                                   which the time-limited water quality standard applies; and  
692  
693                                   ii)    the person covered under the time-limited water quality  
694                                   standard.  
695  
696                                   3)    The time-limited water quality standard requirements and conditions that  
697                                   apply throughout the term of the time-limited water quality standard:  
698  
699                                   A)    must represent the highest attainable condition of the watershed,  
700                                   water body, or waterbody segment applicable throughout the term  
701                                   of the time-limited water quality standard based on petitioner's  
702                                   demonstration required by Section 104.560; and  
703  
704                                   B)    must not result in any lowering of the currently attained ambient  
705                                   water quality, unless the petitioner demonstrates that a time-limited  
706                                   water quality standard is necessary for restoration activities under  
707                                   Section 104.560(b)(7).  
708  
709                                   4)    The highest attainable condition of the waterbody or water segment as a  
710                                   quantifiable expression of one of the following:  
711  
712                                   A)    For a single discharger and a multiple discharger time-limited  
713                                   water quality standard:  
714  
715                                   i)    The highest attainable interim criterion;  
716  
717                                   ii)    The interim effluent condition that reflects the greatest  
718                                   pollutant reduction achievable; or  
719  
720                                   iii)    If no additional feasible pollutant control technology can be  
721                                   identified, the interim criterion or interim effluent condition  
722                                   that reflects the greatest pollutant reduction achievable with  
723                                   the pollutant control technologies installed at the time the  
724                                   Board adopts the time-limited water quality standard, and

- 725 the adoption and implementation of a Pollutant  
726 Minimization Program.  
727  
728 B) For a time-limited water quality standard applicable to a  
729 watershed, water body, or a waterbody segment:  
730  
731 i) The highest attainable interim use and interim criterion; or  
732  
733 ii) If no additional feasible pollutant control technology can be  
734 identified, the interim use and interim criterion that reflect  
735 the greatest pollutant reduction achievable with the  
736 pollutant control technologies installed at the time the  
737 Board adopts the time-limited water quality standard, and  
738 the adoption and implementation of a Pollutant  
739 Minimization Program.  
740  
741 5) A statement providing that the requirements of the time-limited water  
742 quality standard are either the highest attainable condition identified at the  
743 time of the adoption of the time-limited water quality standard, or the  
744 highest attainable condition later identified during any reevaluation  
745 consistent with Section 104.580, whichever is more stringent.  
746  
747 6) The term of the time-limited water quality standard, expressed as an  
748 interval of time from the date of USEPA approval or a specific date.  
749  
750 7) For a time-limited water quality standard with a term greater than five  
751 years, a specified frequency to reevaluate the highest attainable condition  
752 pursuant Section 104.580. The reevaluation must occur no less frequently  
753 than every five years after both Board and USEPA approval of the time-  
754 limited water quality standard.  
755  
756 8) A provision that the time-limited water quality standard will no longer be  
757 the applicable water quality standard for purposes of the Clean Water Act  
758 if the petitioner does not conduct a reevaluation consistent with the  
759 frequency specified in the time-limited water quality standard or the  
760 results are not submitted to USEPA as required by Section 104.580.  
761  
762 e) Any party may file a motion for reconsideration, under 35 Ill. Adm. Code  
763 101.520, of a final Board order entered under this Section.  
764

765 (Source: Added at 41 Ill. Reg.\_\_\_\_\_, effective \_\_\_\_\_)  
766

767 **Section 104.570 USEPA Review**

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- a) Before a time-limited water quality standard becomes effective for Clean Water Act purposes, the Agency must submit the time-limited water quality standard to USEPA and obtain USEPA approval in accordance with section 303(c) of the Clean Water Act and 40 CFR 131.20 and 131.21.
- b) The Agency must file USEPA's decision with the Board.
- c) If USEPA disapproves of a Board adopted time-limited water quality standard, the petitioner may file a Petition to Modify a Time-Limited Water Quality Standard.
  - 1) The petition to modify must address all deficiencies raised by USEPA and must be served on all parties to the Board's proceeding adopting the time-limited water quality standard.
  - 2) The Board must automatically incorporate the record from the Board's proceeding adopting the time-limited water quality standard.
  - 3) The Board must accept public comments for at least 30 days after a petition to modify is filed.
  - 4) If the Board, in its discretion, concludes a hearing would be advisable, a hearing must be held.
  - 5) Any order issued by the Board modifying a previously granted time-limited water quality standard must comply with Section 104.565.
  - 6) The Agency must submit any order issued by the Board modifying a previously granted time-limited water quality standard to USEPA for review and approval.

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.575 Coverage Under Board-Approved Time-Limited Water Quality Standards**

- a) Any discharger that has not obtained a time-limited water quality standard may obtain coverage under a Board-approved time-limited water quality standard by satisfying, at the time of renewal or modification of that person's NPDES permit, or at the time the person files an application for certification under section 401 of the federal Clean Water Act, the Board-approved criteria for coverage under the time-limited water quality standard.

- 811            b)    Any applicant obtaining coverage under a Board-approved time-limited water
- 812                            quality standard must comply with the requirements and conditions that apply
- 813                            throughout the term of the time-limited water quality standard established under
- 814                            Section 104.565(d)(3).
- 815
- 816            c)    Any applicant obtaining coverage under a Board-approved time-limited water
- 817                            quality standard must participate in any reevaluations conducted under Section
- 818                            104.580.
- 819

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.580 Reevaluation**

- 822
- 823
- 824            a)    Proposed Reevaluation. When a time-limited water quality standard has a term
- 825                            greater than five years and the Board accordingly sets a schedule for reevaluation:
- 826
- 827                            1)    The petitioner and any person granted coverage under Section 104.575
- 828    must file its proposed reevaluation with the Board according to the
- 829    reevaluation frequency set forth in the Board's order adopting the time-
- 830    limited water quality standard under Section 104.565(d)(7).
- 831
- 832                            2)    Petitioner must serve one copy of the proposed reevaluation on the
- 833    Agency, each participant, and each member of the notice list maintained
- 834    by the Board under Section 104.520(b)(4).
- 835
- 836                            3)    The proposed reevaluation must assess the highest attainable condition
- 837    using all existing and readily available information.
- 838
- 839            b)    The clerk must publicize notice of the proposed reevaluation on the Board's
- 840                            website and in a newspaper of general circulation in the county where the facility
- 841                            or pollution source is located.
- 842
- 843            c)    The Board must accept public comments for a period not shorter than 30 days.
- 844
- 845            d)    The Board must reevaluate the highest attainable conditions using all existing and
- 846                            readily available information.
- 847
- 848            e)    The Agency must submit the Board's reevaluation opinion and order to USEPA
- 849                            for approval within 30 days after issuance of the Board's order.
- 850

(Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.585 Appeal Rights**

854  
855 Any person who is adversely affected or threatened by a final Board order entered under this  
856 Subpart may obtain judicial review of the Board order by filing a petition for review within 35  
857 days after the date the Board order was served on the person affected by the order, under the  
858 provisions of the Administrative Review Law [735 ILCS 5/Art. III], and the rules adopted  
859 pursuant thereto, except that review shall be afforded directly in the appellate court for the  
860 district in which the cause of action arose and not in the circuit court. For purposes of judicial  
861 review under this Section, a person is deemed to have been served with the Board's final order  
862 on the date on which the order is first published by the Board on its website. [415 ILCS  
863 5/38.5(j)]

864  
865 (Source: Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

866  
867 **Section 104.590 Extension**

- 868
- 869 a) If, at the end of the time-limited water quality standard, the underlying designated  
870 use remains unattainable, the petitioner may seek an extension of an existing  
871 time-limited water quality standard, consistent with the requirements of this  
872 Subpart.
- 873
- 874 b) A petition to extend a time-limited water quality standard previously granted by  
875 the Board is a new petition for a time-limited water quality standard before the  
876 Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code  
877 101.Subpart C, including payment of the filing fee under Section 104.520(c) and  
878 35 Ill. Adm. Code 101.302(e)(6).
- 879
- 880 c) In addition to the requirements of Section 104.530, the petition for extension of  
881 the time-limited water quality standard must contain:
- 882
- 883 1) A detailed explanation showing that satisfactory progress toward attaining  
884 the designated use has been made during the term of the prior time-limited  
885 water quality standard and that additional time is needed to make further  
886 progress;
- 887
- 888 2) a demonstration of whether conditions have changed such that the  
889 designated use and criterion are not attainable;
- 890
- 891 3) a demonstration of whether new or additional information has become  
892 available to indicate that the designated use and criterion are not attainable  
893 in the future;
- 894
- 895 4) documentation showing that the requirements and conditions established  
896 by the Board that applied throughout the term of the prior time-limited

897 water quality standard have been fully met, or, if any requirement or  
898 condition has not been fully met, a detailed explanation of the reason or  
899 reasons that the requirement has not been fully met; and

900  
901 5) a motion to incorporate any material from the record of the prior time-  
902 limited water quality standard proceeding in accordance with 35 Ill. Adm.  
903 Code 101.306.

904  
905 (Source: Added at 41 Ill. Reg.\_\_\_\_\_, effective \_\_\_\_\_)